ज्यूडिशियल इन्क्वायरी की फाइनल रिपोर्ट आएगी।

श्री राघवजी: उपसभाध्यक्ष महोदया, इन्क्वायरी की जानी है, प्राइमा फेसी जो दोषी लोग हैं तोमर जैसे लोग उनको सस्पेंड किया जाना चाहिये तभी इन्क्वायरी सही होगी। अगर वे वहां बैठे रहेंगे तो सही इन्क्वायरी कैसे होगी?

श्री सतीश अग्रवाल: सस्पेंड करने में मजबूरी है तो कम से कम दूर ट्रांस्फर तो कर दीजिये।

श्री मोहम्मद मकबूल डार: वह तो किया है। मैंने अभी कहा है आप शायद इस तरफ ध्यान नहीं दे रहे थे। **(व्यवधान)**

SHRI RAM GOPAL YADAV: Why has he not been suspended? That was the question.

श्री मोहम्मद मकबूल डार: कमिश्नर को ट्रांस्फर किया है। **(व्यवधान)**

SHRI RAM GOPAL YADAV: He should have been suspened.

प्रो॰ राम लखन सिंह वर्मा: माननीय मंत्री जी ने हरिद्वार के संबंध में कुछ नहीं बताया। **(व्यवधान)**

STATUTORY RESOLUTION SEEKING DISAPPROVAL OF THE ARBITRATION AND CONCILIATION (THIRD) ORDINANCE, 1996 (NO. 27 OF 1996) PROMULGATED BY THE PRESIDENT OF THE 21st JUNE 1996.

THE ARBITRATION AND CONCILIATION BILL, 1996—Contd.

उपसभाध्यक्ष (कुमारी सरोज खापर्डे): सदन की इजाजत हो तो क्या हम लोग स्टेट्यूटरी रिजोल्यूशन ले सकते हैं। मीणा जी बोल रहे थे उस विषय पर, आप अपना भाषण फिर से शुरू करेंगे।

श्री मूल चन्द मीणा (राजस्थान): मैं कर रहा हूं मैडम..

एक माननीय सदस्य: यह कब तक चलेगा?

उपसभाध्यक्ष (कुमारी सरोज खापर्डे): अभी तो अग्रवाल जी बोलेंगे, एक और वक्ता बोलने वाले हैं।

श्री सतीश अग्रवाल (राजस्थान): मैडम वाईस चैयरमैन, फिर आज तो खत्म नहीं होगा। यह कैसे होगा?

उपसभाध्यक्ष (कुमारी सरोज खापर्डे): संभवतया: हो जाएगा। अभी एक वक्ता और बोलने वाले हैं। उसके बाद आपका जवाब होगा।

श्री सतीश अग्रवाल: मैं तो विदड्रा कर दूंगा। ये एश्योरेंस दे देंगे तो मैं विदड्रा कर लूंगा।

उपसभाध्यक्ष (कुमारी सरोज खापर्डे): तब तक मंत्री जी आएंगे। मंत्री जी के आने के बाद सारा खत्म हो ही जाएगा बिल पास होकर।

श्री सतीश अग्रवाल: मीणाजी, जरा जल्दी कर दें मेहरबानी करके। हमारे चेयरमैन साहब का डिनर है, उसमें जाना है।

श्री मूलचन्द मीणा: उस डिनर में मुझे भी जाना है। मैं दो-तीन प्वाइंट बोलूंगा।

यह माध्यस्थम् और सुलह विधेयक पास होने के बाद निश्चित रूप से न्यायालयों को सुविधाजनक होगा। कई ऐसे मामले होंगे जिनमें न्यायालय अपना निर्णय नहीं दे सकते हैं। न्यायालय निर्णय देने में सक्षम नहीं होते हैं। ऐसे कई मामलों को माध्यस्थम् और सुलह विधेयक के माध्यम से पंचाट बनाकर सुलझाया जा सकता है। मैं यह भी कह रहा था कि माध्यस्थ अधिकरण कानून बनने के बाद जो माध्यस्थ पंचाट है वे अपनी सीमाओं में रहकर कार्य करेंगे, सीमाओं से बाहर जाकर कोई कार्य नहीं करेगा। वे सीमाओं में रहकर कार्य करेंगे। तो इससे जो भावना व्यक्त की गयी, कई सदस्यों ने भ्रष्टाचार की बात कही, वह बात भी कंट्रोल होगी। उस मायने से भी यह बिल महत्वपूर्ण है। साथ ही सम्पत्ति के बारे में जो निर्णय माध्यस्थ के माध्यमों से होंगे, वे, जो डिक्री न्यायालय देते हैं, उसी प्रकार के माने जाएंगे। इससे लोगों को इस पर विश्वास होगा, इसके ऊपर विश्वास बनेगा कि इस माध्यस्थ के जो निर्णय हैं, ये महत्वपूर्ण निर्णय हैं। न्यायालय जैसा निर्णय लोग महसूस करेंगे। तो इससे यह फायदा होगा कि कुल डिक्री में जो लम्बा समय लगता है उस समय में बचत होगी और खर्चे की भी बचत होगी। साथ ही इस माध्यस्थ को यह भी अधिकार होगा कि निर्णय जो पंचाट ने दिया है सम्पत्ति से संबंधित उस पर ब्याज का क्या रेट हो, कितना ब्याज हो। इसका फैसला भी माध्यस्थ करेगा।

मैडम, इस बिल के पास होने के बाद हमारी जो धारणा बनी हुई है कि न्यायालयों के अंदर न्याय नहीं मिलता है, न्याय होने में देरी होती है, वह दूर होगी। यह शायद उसमें सहयोगी होगा और हमारे जो निर्णय रुके हुए हैं उनमें शीघ्रता आएगी। यही मैं कहना चाहता हूं। थैंक्यू।

उपसभाध्यक्ष (कुमारी सरोज खापर्डे): बहुत-बहुत धन्यवाद मीणाजी। श्री रामनाथ कोविन्द।

SHRI RAM NATH KOVIND (Uttar Pradesh): Madam Vice-Chairperson, I am grateful to you for giving me an opportunity to participate in the debate on the Arbitration and Conciliation Bill. 1995. While supporting the Bill I would like to make some points because it is a very important piece of legislation which we are going to enact.

First of all, the present Bill has been necessitated, as has also been stated by the hon. Minister in the Statement of Objects and Reasons as contained in the Bill, that the existing Act, that is, the Indian Arbitration Act, 1940, has become out of date. Madam, this Act is based essentially on the English Arbitration Act, 1931. In the United Kingdom, the same Arbitration Act was amended in the year 1950, thereafter in 1975 and lastly in 1979. It is also on record that the Supreme Court through its judgement in the year 1981 had adversely commented on the present Act. Therefore, the Government says that it is for this reason also that it has come with the fresh legislation. The Public Accounts Committee had also pointed out some discrepancies and deficiencies, particularly with regard to the delay in arbitration proceedings. Thereafter, the Law Commission Report was also made public in 1978. This is one of the reasons for bringing the present Bill. But the main reason I see is the unanimous resolution passed by the UN Commission for International Trade Law, of which India also happens to be a Member. In the year 1980 a model law on international arbitration was adopted.

The hon. Minister has just stated that there is a great need to amend the law and that too very urgently. He has just stated this while moving the Bill. Madam, it is quite surprising when the Minister says that there is a great need to amend the law very urgently, and I do not know why the Central Government—the Government is in continuity—has been sleeping over the matter for the last fifteen years.

Way back in the year 1978 the Central Government should have started the process of bringing a new legislation, particularly to bring suitable amendments in the Arbitration Act, 1940, but the Government did not do that. This reflects on the working of the Government. We all know that in the courts of law at present the biggest litigant is the Government itself. As far as arbitration matters are concerned, I have also some experience of court matters, and I can say that at least 50 per cent of the cases relating to arbitration matters are from the Government Departments. Whether it is the CPWD or the PWD or other Departments concerned with general public or the State Government undertakings or the Central Governemnt undertakings, all these Departments definitely have arbitration clauses in their agreements. And that clause gives a handle not only to the Government but to the public also to go for arbitration proceedings and ultimately the proceedings are settled only through the court of law. It takes a lot of time in the disposal of a particular dispute.

Madam, we are now talking of reforms, of new legislations, suitable amendments in the Indian Arbitration Act. There is a lot of backlog in court matters. On the one hand, we are all seriously concerned about quick disposal, on the other hand, the Government particularly the High Courts, are rather interested in disposing of the services of the sitting officers. It has come to my notice and I would like to bring to the notice of the Chair and through you, Madam, to the notice of the whole nation. It was also published in the newspapers. वह पत्र है, राष्ट्रीय सहारा, नई दिल्ली, शुक्रवार 12 जुलाई। महोदया, यह दिल्ली की बात है। सूत्रों ने कहा कि न्यायिक प्रशासन, राजधानी के 6 अतिरिक्त जिला एवं सत्र न्यायाधीशों को सेवामुक्त करने पर विचार कर रहा है। इन में से दो जज 55 वर्ष की उम्र पार कर चुके हैं जबकि दो अन्य प्रोबेशन पीरियड के दौरान चल रहे हैं। सूत्रों का कहना है कि यह सभी न्यायिक सेवा में सीधी भर्ती से आए हैं। They have been selected directly throught the Bar. और एक ही कारण बताया गया है कि वह कार्य के योग्य नहीं हैं। इसलिए

उन को हटाने की व्यवस्था की जा रही है। Madam, this is a serious issue. I am told that the six officers whose services are going to be dispersed with belong to the weaker sections of society. They belong to SC/ST. I register my protest and I would like the Government to have a dialogue with the Delhi High Court. These Officers in the name of incapability or unsuitability should not be removed from the service. Since the hon. Minister is not here, if you kindly allow me, I will speak; otherwise I will stop speaking and sit down.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Please go ahead.

SHRI RAM NATH KOVIND: I have gone through the Bill. I now refer to Part 3, which relates to conciliation.

SHRI SATISH AGARWAL: Mr. Kovind, no Minister is listening to you.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr. Jalappa, I hope you are taking notes of what the Memebers are saying. Please keep a note of that, because the Minister will come and reply.

SHRI SATISH AGARWAL: He is not taking notes. He is talking to Swami Ji. He is in the comapny of a Swami. It is very dangerous.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): No, Mr. Agarwal, the Minister was really taking notes while Members were talking.

SHRI SATISH AGARWAL: In the meanwhile, supposing he concludes, what would you do? If I ask him to sit down and he concludes, what would you do?

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): The Minister will reply. He will arrive here.

SHRI SATISH AGARWAL: I seek leave of the House to withdraw my Resolution in anticipation of the Ministers reply that he will look to my points. I seek leave of the House to withdraw my Resolution.

SHRI MD. SALIM: This permission the House has to give. *(Interruptions)*

SHRI SATISH AGARWAL: I am asking him to witndraw and si down. Then what will you do?

SHRI MD. SALIM: Please don't do it.

SHRI SATISH AGARWAL: Mr. Salim, after all, the Minister has to reply and he has not yet come. How long will we wait for him?

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Please do not take this stand Mr. Agarwal. Let the hon. Member continue. I think, at any moment, the Minister will come now and he will reply. It is a question of a few minutes.

SHRI SATISH AGARWAL: He is not likely to come.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): He is likely to come.

SHRI SATISH AGARWAL: Kindly verify that.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): I am on the job. And the Table officials are also on the job.

SHRI RAM NATH KOVIND: May I continue?

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Please go ahead.

SHRI RAM NATH KOVIND: With regard to Part III of the present Bill, it deals with conciliation. I find that there is no definition of the term 'conciliation' given anywhere in the Bill. They have defined 'arbitration', but not 'conciliation'.

I find from the provisions of this Part that conciliation proceedings are to be transacted without the intervention of the court. Any party that wishes can have an agreement to go to conciliation proceedings. They will go on. A conciliator can also be appointed. It may be one or two or three. There may be a sole conciliator

also. But ultimately there will be a final settlement agreement. The Bill says that the status of the settlement agreement will be as that of an arbitral award. Madam, there is a funny thing which I would like to mention here. Though the status has been given as that of an arbitral award, there is no legal sanction, there is no authority to enforce the said settlement agreement as compared to the arbitral award. A situation may arise that there is a settlement agreement and the party refuses to adhere to it. There is no mechanism which has been provided in the Bill that either party can go to the court of law or to any other authority for its enforcement. And, for that reason, I would say that the whole Party relating to conciliation proceedings will be rather redundant and since there is no legal sanciton, it may also lead to arbitrariness on the part of the conciliator.

Finally, I would say, with regard to this Part relating to conciliation, that it may be a wasteful exercise. I do not know for what reason the Bill has been so drafted as to consist of these conciliation proceedings.

Thereafter, coming to Part II, there is another anomaly. This Part deals with Chapters I and II. It related to foreign awards. Chapter I speaks of the New York Convention Awards and Chapter II talks of the Geneva Convention Awards. 6.00 P.M.

Madam, for the information of the hon. Members, I would like to refer to Chapter I which contains the New York Convention Award. The first part contains a definition—section 44. This talks of foreign award.

SHRI MD. SALIM: Mr. Solanki, allow him to speak.

SHRI RAM NATH KOVIND: But I think the hon. Minister is noting down the points. In this chapter, it is said and I quote: "Unless the context otherwise requires, foreign awards means an arbital award on differences between persons, arising out of the legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October 1960." This is the definition of the foreign award as per Chapter I. In the next Chapter, another definition of the foreign award has been given. This is quite strange. It says: Foreign award means an arbital award on differences relating to matters considered as commercial under the law in force in India made after the 28th day of July 1924." then further, Madam, there is no procedure for holding the arbitration proceedings. No procedure has been prescribed for holding the arbitration proceedings relating to foreign awards. Section 2, Subsection 7 of the Bill talks of the domestic award. It does not talk of the foreign award. The Bill is silent as far as the procedure relating to foreign awards and foreign arbitration proceedings are concerned. Therefore, the hon. Minister has to take into consideration the anomalies and the discrepancies in the Bill pointed out by me. With these words, I conclude. Thank you.

SHRI SANATAN BISI (Orissa): Madam, so far as the present Bill is concerned, in view of the decision of the Supreme Court as well as the guidelines of our Committee, the Government has no other option but to go ahead with it. Madam, as you know, a lot of cases are pending.....*(Interruptions)*

SHRI MD. SALIM: Madam, how long will we sit? It is already six o' clock and you have not taken the sense of the House.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr. Salim, I just got a message from Lok Sabha that the Minister would reach here around 6.05 PM. So, we can wait for another five, ten minutes.

SHRI MD. SALIM: But you should take the sense of the House whether we should sit beyond six o' clock or not. We have not decided to sit late this week. From the next week we will sit late. We sat yesterday because of the business. I

think we should adjourn today and whatever is left can be taken up tomorrow. If Mr. Bisi is interested to speak, he can continue his speech tomorrow.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Whatever you say.....*(Interruptions)*

SHRI RAM GOPAL YADAV: Madam, the Minister has to reply in the other House. So, he can reply the next day. You can adjourn the House.

SHRI SATISH AGARWAL: Tomorrow, from twelve o' clock to thirty minutes past one of the clock, we can do it. Then there is the Private Members' day and we have decided that we shall not forego lunch. *(Interruptions)*. So, kindly adjourn this for Monday.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE) Mr. Salim, will you allow him to speak? He has just started.

SHRIMATI KAMLA SINHA: Madam, I request you to allow Mr. Bisi to finish.

उपसभाध्यक्ष (कुमारी सरोज खापर्डे): अग्रवाल जी, आप बिसि साहब को बोलने दीजिए। उसके बाद हम लोग ऐडजार्न करें।

श्री सतीश अग्रवाल: कंपलीट तो नहीं होगा फिर भी। कुछ निश्चित नहीं है, मैं उस समय भी कह रहा था, बड़ा मुश्किल होता है जब दूसरे हाऊस में चले जाते हैं। वहां लोकसभा से बीच में से उठकर नहीं आ सकते।

उपसभाध्यक्ष (कुमारी सरोज खापर्डे): वह आ रहे हैं अभी।

SHRI SANATAN BISI: I want to substantiate my submission, Madam, that whatever are there in the original Act, and subsequently in the Bill that has been introduced, it is a very daring step that the present Government has taken into consideration the various judgments and the various observations. As far as the litigation point is concerned, the hon. Member has very rightly pointed out that although the present Bill that has been introduced was delayed, the delay was due to several other factors. Here, the only thing I want to say is that the Bill in its present form should be approved by the House and there should be unanimity so far as this Bill is concerned.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Thank you, Mr. Bisi.

सतीश अग्रवाल जी, आप बोलिए

श्री सतीश अग्रवाल: वह जवाब देंगे तभी तो मैं बोलूंगा।

उपसभाध्यक्ष (कुमारी सरोज खापर्डे): सारी, मंत्री जी आ गए। मेरा ध्यान अग्रवाल जी की तरफ ही था।

श्री सतीश अग्रवाल: मैं बड़ा खुशकिस्मत हूं।

THE MINISTER OF STATE OF THE DEPARTMENT OF LEGAL AFFAIRS, LEGISLATIVE DEPARTMENT AND DEPATMENT OF JUSTICE (SHRI RAMAKANT D. KHALAP): Madam Vice-Chairperson, I am really in a difficulty because I was all the time there in the Lok Sabha and I am told that a number of points have been raised which are of great importance, and if the House permits me, I could give a reply on Monday.....*(Interruptions)*...

SOME HON. MEMBERS: There should be unanimity in the House.

SHRI SATISH AGARWAL: We are going to pass it. ....*(Interruptions)*....We will pass it.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr. Minister, you make a request to the Member.

SHRI SATISH AGARWAL: Sir, you first make a request to me to withdraw my Resolution. I will respond positively unlike the Government; unlike the Government

SHRI RAMAKANT D. KHALAP: Madam, I am making a request to the hon. Member that the Statutory Resolution which has been moved be withdrawn because this is a very important Bill as it is accepted. The reasons why the Ordinance was brought are also very clear. The statement was placed on the Table of the House. Madam, as regards the main

debate on this issue of the Arbitration Bill, I want to be correct. As far as the various points raised by the hon. Members are concerned, I just now do not know; I am not able to read because I was there in the Lok Sabha. If the House permits and if the Chair permits, I would like to respond to those points either tomorrow or on Monday.

SHRI SATISH AGARWAL: Madam, that would be more appropriate. There is unanimity in the House so far as the contents of the Bill are concerned. We can grant this concession to you, Sir, this being the first chance to pilot the Bill in this House. You can be very much indulgent on this issue. You are a nice person. But regarding the rules, under Sections 82 and 84 have you framed those rules? Has any High Court framed those rules? Has the Central Government framed those rules or not?

SHRI RAMAKANT D. KHALAP: That information is right now not available.

SHRI SATISH AGARWAL: That was the main contention.

सोमवार को 20 मिनट लगेंगे। आप इन्फॉरमेशन ले लीजिए और 10 मिनट में जवाब दे दीजिएगा I will withdraw and it will be passed.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Do you need more time, Mr. Minister?

SHRI RAMAKANT D. KHALAP: Yes, I need more time, and I request the House to give me more time.

SHRI SATISH AGARWAL: We have no objection.....*(Interruptions)*....

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Do you require more time to cover all the points in your speech, Mr. Minister?

SHRI RAMAKANT D. KHALAP: Only some time: I will cover all the points raised by the hon. Members. Madam, this is the first Bill I am piloting and I desire that I should answer all the points.

SHRI SATISH AGARWAL: Yes, you are very intelligent.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Okay. If this is your request, Mr. Minister, and if the House agrees, I think we should take up your reply on Monday and Mr. Satish Agarwal's request will also be there. I do not have any objection. So, I adjourn the House till 11.00 A.M. on Friday.

The House then adjourned at ten minuted past six of the clock till eleven of the clock on Friday, the 19th August, 1996.

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